IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6206 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

FULSINH JUVANSINH CHAUHAN

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. This petition under Article 227 of the Constitution challenges the order of the Labour Court, Nadiad whereby the respondent, a conductor, is ordered to be reinstated without backwages.

2. The impugned order is made on 18.4.1987 and, as submitted by the learned counsel for the petitioner, the respondent is already reinstated in terms of the award on 29.6.1987.

3. The learned counsel for the petitioner has vehemently argued that there is a clear finding of fact in the impugned award that serious misconduct is proved at the end of the departmental inquiry, the legality of which was admitted by the respondent. It is, therefore, submitted that in such a case of proved misconduct involving misappropriation of money, the punishment of dismissal was fully justified and the Labour Court ought not to have interfered with the same. The learned counsel has relied upon a judgment of this Court in GUJARAT STATE ROAD TRANSPORT CORPORATION v. KACHRAJI [1993 (1) GLR 302] in support of his submission that the powers under Section 11-A of the Industrial Disputes Act, 1947 are required to be exercised judicially and that misappropriation is a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the Labour Court under Section 11-A of the Act. The learned counsel has, in the alternative, submitted that the respondent must be visited with some positive order of punishment to have a deterrent effect even if the order of dismissal were not to be upheld.

4. No one has appeared for the respondent even though notice of Rule is served. Going through the impugned award, it appears that the respondent has given up his challenge to the legality of the departmental inquiry and restricted his case to the propriety of the punishment. The evidence of the respondent to the effect that he was sick on the day the alleged misconduct was committed has not been believed and the Labour Court has come to the conclusion that the misconduct of the respondent stood proved. However, considering the fact that the amount held to have been misappropriated by the respondent was very small as also the past record of a few minor punishments and length of his service and the fact that the respondent was to lose wages for six years of unemployment after dismissal, the Labour Court has set aside the order of dismissal and ordered reinstatement of the respondent without backwages.

5. The provisions of Section 11-A of the Act empowers the Labour Court to set aside an order of discharge or dismissal where it is satisfied that the order of discharge or dismissal was not justified. The

order of discharge or dismissal may not be justified in several circumstances, one of which would be when the punishment imposed is shockingly disproportionate to the misconduct committed by the workman. It is true that the misconduct of misappropriation of money is a major and serious misconduct and the punishment of dismissal would ordinarily be the proper punishment. However, in the facts of the present case, it cannot be said that the Labour Court lacked jurisdiction which it had exercised in making the impugned award. Considering the gravity of the misconduct and the loss which would be caused to the respondent on account of unemployment for a period of six years, the Labour Court has sought to strike a balance between the gravity of the offence and the punishment imposed and the loss to be suffered by the respondent. In this context, the learned counsel for the petitioner has submitted that even if it may be too late in the day to uphold the dismissal after 13 years of reinstatement, the respondent must suffer some additional punishment of stoppage of some increments. There is considerable force in this submission. Judicial orders ought not to set wrong examples which may encourage dishonesty in such employment. In the facts and circumstances, the ends of justice would be met if further punishment is imposed upon the respondent by way of stoppage of two increments.

6. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that there shall be a further order of stoppage of two increments with permanent effect from 01.10.2000 by way of punishment against the respondent. Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/-

(KMG Thilake)

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